IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

ANDERS TRONSEN,	*	Case No. 3:08-CV-148
Plaintiff	*	JUDGE CARR
	*	
vs.	*	DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR APPOINTMENT OF ATTORNEY
TOLEDO-LUCAS COUNTY PUBLIC LIBRARY	*	
Defendants	*	Julia R. Bates Lucas County Prosecuting Attorney By: John A. Borell (0016461) Karlene D. Henderson(0076083) Assistant Prosecuting Attorneys Lucas County Courthouse, Suite 250 Toledo, Ohio 43624 Phone: (419) 213-2001 Fax: (419) 213-2011 E-mail: JABorell@co.lucas.oh.us Counsel for Defendant

I. STATEMENT OF THE CASE

On January 17, 2008, the plaintiff filed a pro se complaint alleging a violation of the First Amendment rights of free speech and expression. The plaintiff also sought a temporary restraining order allowing him access to the public library during the pendency of this action. On January 22, 2008, this Court denied the plaintiff's motion for a temporary restraining order.

The plaintiff then filed "Writ of Prejudice" seeking removal of the trial judge from the case. On

Dockets.Justia.com

February 26, 2008, this Court denied the plaintiff's request.

The plaintiff has filed a series of pleadings-the purpose of which is not entirely clear. He has now filed a motion to appoint an attorney

As will be established below, this motion must be denied.

II. LAW AND ARGUMENT

There is no constitutional or statutory right to counsel in a civil case. *Taylor v. Dickel*, 293 F.3d 427(8th Cir. 2002). It is a privilege that is justified only by exceptional circumstances. *Lavado v.Koehane*, 992 F.2d 601, 605-06(6th Cir.1993); *Specialty Vehicle Acquisition Corp. v. American Sunroof Corp.*, Case No. 07-13887(E.D. Mich. Mar. 10, 2008), 2008 U.S. Dist. *LEXIS* 17999 *2; 28 *U.S.C.* §1915(d). While applicable to all civil cases, §1915(d) is intended primarily for cases that are essentially criminal or penal in nature. *Kennedy v. Meecham*, 382 F. Supp. 996(D. Wyo. 1974), *vacated on other grounds*, 540 F.2d 1057(10th Cir. 1976). A court is not authorized by §1915(d) to appoint counsel, but merely to request that an attorney represent an indigent person unable to retain counsel. *Knoll v. Socony Mobile Oil Co.*, 369 F.2d 425(10th Cir. 1966), *cert. denied*, 386 U.S. 967, *reh. denied*, 389 U.S. 893(1967); *Wickliffe v. Duckworth*, 574 F.Supp. 979(N.D. Ind. 1983).

In determining if special circumstances exist sufficient to invoke §1915(d), the plaintiff must establish the following factors: (1) likelihood of success of plaintiff's claims, *Agyeman v. Corrections Corporation of America*, 390 F.3d 1101(9th Cir. 2004); *Henry v. City of Detroit Manpower Department*, 763 F.2d 757, 760(6th Cir. 1985) (2) party is indigent, 28 *U.S.C.* 1915(e)(1)[1]; (3) party has made diligent efforts

[1] The defendant questions the plaintiff's claim to be indigent. His indigency status was challenged in an earlier case involving the defendant that plaintiff filed in the Lucas County Common Pleas Court. *Tronsen v. Lucas County, et al.*, Lucas County Common Pleas Court Case No. CI06-1131. In that case, the Court that the plaintiff was NOT indigent. Once the Court found that the plaintiff was not indigent, the plaintiff submitted the required filing fee.

The plaintiff's claim of indigency was also challenged in *Tronsen v. Lucas County Board of Elections*, Case No. 3:06-CV-7089. However, the Court did not rule on the challenge prior to granting the defendant's motion to to secure private counsel, *Nelson v. Redfield Lithograph Printing*, 728 F.2d 1003(8th Cir. 1984); *Ulmer v. Chancellor*, 691 F.2d 209(5th Cir. 1982); (4) complexity of legal and factual issues, *Henry*, supra.; *Hill v. Dividson*, 844 F. Supp 237(E.D. Pa. 1994); and (5) can the case go forward without the appointment of counsel, *Wenger v. Canastota Central School District*, 146 F.3d 123(2nd Cir. 1998), *cert. denied*, 526 U.S. 1025(1999). Consideration of each of these factors clearly establishes that the plaintiff is not entitled to "appointment" of counsel.

The plaintiff has failed to establish that his claims are likely to succeed. To the contrary, in denying the plaintiff's motion for a temporary restraining order, this Court has already held that the plaintiff is not likely to succeed on the merits.

The plaintiff has failed to submit any evidence that he has made any effort to secure private counsel. Additionally, neither the legal nor factual issues present in the case are complex.

Lastly, there is no evidence that this case cannot proceed without the appointment of counsel. This is the fourth pro se case filed by this plaintiff within the two years. Each of the three previous cases proceeded to judgment without counsel.[2]

Thus, the plaintiff has failed to establish the existence of exceptional circumstances justifying the "appointment" of counsel pursuant to 28 *U.S.C.* §1915(d). Therefore, the plaintiff's motion for appointment of counsel must be denied.

---

dismiss.

[2] *Tronsen v. Lucas County Board of Elections*, Case No. 3:06-CV-7089; *Tronsen v. United States Postal Service*, Case No. 3:06-CV-1172; and *Tronsen v. Lucas County, et al.*, Lucas County Common Pleas Court Case No. CI06 1131.

Respectfully submitted

JULIA R. BATES
LUCAS COUNTY PROSECUTING ATTORNEY

By: /s/ John A. Borell
John A. Borell
Karlene D. Henderson
Assistant Prosecuting Attorneys
Counsel for Defendant

CERTIFICATION

A copy of the foregoing Memorandum in Opposition was sent by email to the plaintiff on the 24th day of March 2008.

/s/ John A. Borell
John A. Borell
Assistant Prosecuting Attorney
Counsel for Defendant